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Yasuyuki Imaizumi

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EXAMINER

YAGER, JAMES C

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

08/28/2008

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***Response to Amendment***

1. It is noted that claim 12 is indicated as amended however, no amendments are made to this claim. The correct status identifier is "previously presented". Applicant is advised to use the correct identifier in the next response.
2. In light of the amendment removing "predetermined width" from claim 1, the rejection of claims 1-17 under 35 U.S.C. §112, second paragraph is withdrawn.
3. In light of the amendment to claim 8, the rejection of claim 8 under 35 U.S.C. §112, second paragraph is withdrawn.

### ***Response to Arguments***

4. Applicant's arguments filed 19 August 2008 have been fully considered but they are not persuasive. Applicant argues:

Claims 1-17 are rejected under 35 U.S.C. §112, first paragraph. The rejection is respectfully traversed.

The Office Action asserts that "[w]hile there is support in the present specification to recite that the projecting portion or portions are formed on a specific layer, i.e., the outer layer, there is no support to broadly recite that the projecting portion or portions are formed on "another layer," which encompasses any layer present including those which are not the outer layer" (see Office Action, page 3). This assertion is respectfully traversed.

Claim 1 recites "another layer laminated on a substrate layer that makes up a main body of said tube, wherein a projecting portion or portions extending all the way down the tube in an axial direction is/are formed on said another layer," and thus recites structural details of the recited "another layer" such that "any layer present including those which are not the outer layer" would not read upon this detailed structure. Further, at least paragraphs [0042] and [0043] of Applicant's specification provide support for the claimed another layer.

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Claims 2-17 are rejected only for their dependency on independent claim 1. Therefore, claims 2-17 also satisfy the requirements of 35 U.S.C. §112, first paragraph. Applicant thus respectfully requests withdrawal of the rejection.

Applicant's arguments are unpersuasive because there is no support to broadly recite that the projecting portion or portions are formed on "another layer". The term "another layer" may be interpreted as any other layer. Therefore, there is a clear difference between reciting an "outer layer" and "another layer" because an outer layer must be on the outside of the article, whereas another layer may be positioned between the outer layer and a substrate layer. Additionally, there is no mention of "another layer" in paragraphs [0042] and [0043], which applicant points to for support of "another layer". Paragraphs [0042] and [0043] only recite "outer layer". If applicant were to amend the claims to recite "outer layer" instead of "another layer" the rejection of claims 1-17 under 35 U.S.C. §112, first paragraph would be withdrawn.

5. Applicant's arguments filed 19 August 2008 have been fully considered but they are not persuasive. Applicant argues:

Claims 1, 3-5, 8, 10-12, 14, 16 and 17 are rejected under 35 U.S.C. §102(b) over Hatayama et al. (JP 61-008544). The rejection is respectfully traversed.

Hatayama does not teach or render obvious every claimed feature of independent claim 1. Hatayama does not teach or render obvious "a projecting portion or portions extending all the way down the tube in an axial direction is/are formed on said another layer," as recited in independent claim 1.

The Office Action asserts that the relief pattern 22 of Hatayama corresponds to the claimed projecting portion (see Office Action, page 4). However, the relief pattern 22 of Hatayama does not have any projections, but rather is comprised solely of indentations (see Figs. 1, 3 and 4 of Hatayama). Moreover, the outer-most part of the relief pattern 22 of Hatayama does not extend beyond the outer layer of the tube container and thus does not provide the same advantages as the invention claimed in independent claim 1 (see Fig. 3 of Hatayama). Therefore, Hatayama does not teach or render obvious the claimed projecting portion of independent claim 1.

Therefore, for at least these reasons, independent claim 1 is patentable over Hatayama. Claims 3-5, 8, 10-12, 14, 16 and 17, which depend from independent claim 1, are also patentable for at least their dependency on independent claim 1, as well as for the additional features they recite. Applicant thus respectfully requests withdrawal of the rejection.

Applicant's arguments are unpersuasive because given that there are indentations in the pattern of Hatayama, the pattern necessarily possesses projections. Additionally, Hatayama specifically discloses that the relief pattern has both indentation part (22a) and protrusion part (22b) (P3).

Regarding applicant's argument that the outer-most part of the relief pattern 22 of Hatayama does not extend beyond the outer layer of the tube container, given that Hatayama discloses another layer that has projections and a substrate layer, it is the examiner's position that it meets the limitations of the claims.

Given that the article of Hatayama is identical to the instantly claimed invention, it is the examiner's position that it will provide the same advantages as the instantly claimed invention. Applicant does not provide any evidence to suggest otherwise.

6. Applicant's arguments filed 19 August 2008 have been fully considered but they are not persuasive. Applicant argues:

Claims 1, 3-5 and 15 are rejected under 35 U.S.C. §102(b) over Redmond (U.S. Patent Application Publication No. 2001/0030192). The rejection is respectfully traversed.

Redmond does not teach or render obvious every claimed feature of independent claim 1. Redmond does not teach or render obvious "a projecting portion or portions extending all the way down the tube in an axial direction is/are formed on said another layer," as recited in independent claim 1.

The Office Action asserts that Fig. 9B discloses the claimed projecting portion (see Office Action, page 6). However, Fig. 9B of Redmond merely relates to a pouch container with a seam formed by the respective front and back portions of the pouch. The alleged projecting portion of Redmond does not project from another layer but, as agreed by the Office Action on page 13, is merely an end seal of the front and back portions of the package (see Fig. 9B of Redmond). Therefore, Redmond does not teach or render obvious the claimed projecting portion of independent claim 1.

Therefore, for at least these reasons, independent claim 1 is patentable over Redmond. Claims 3-5 and 15, which variously depend from independent claim 1, are also patentable for at least their dependency on independent claim 1, as well as for the additional features they recite. Applicant thus respectfully requests withdrawal of the rejection.

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Applicant's arguments are unpersuasive because Redmond teaches that the projecting portion extends all the way down the tube in an axial direction and projects from the another layer as seen in Fig. 8b or more clearly in Fig. 9b extending all the way down the tube. Examiner agrees with applicant's assertion that the projecting portion referred to in Redmond is the seal of the package. However, this does not change the fact that the seal is also a projecting portion extending all the way down the tube in the axial direction formed on said another layer.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES YAGER whose telephone number is (571)270-3880. The examiner can normally be reached on Mon - Thurs, 7:30am-5pm, EST, Alt. Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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JY 8/22/08

/Callie E. Shosho/  
Supervisory Patent Examiner, Art Unit 1794